

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held October 17, 2013

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
James H. Cawley
Pamela A. Witmer, Abstaining
Gladys M. Brown

Act 13 of 2012 – Implementation of
Unconventional Gas Well Impact Fee Act;
Chapter 23

Docket No. L-2013-2375551

PROPOSED RULEMAKING ORDER

BY THE COMMISSION:

On February 14, 2012, Governor Corbett signed into law Act 13 of 2012, the Unconventional Gas Well Impact Fee Act (Act 13 or Act), which amends Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes. Act 13 provides, *inter alia*, for an unconventional gas well fee, Oil and Gas Act amendments and standards for local ordinances. The Pennsylvania Public Utility Commission's (Commission) administrative responsibilities for implementing the provisions of Act 13 are contained within Chapters 23 (relating to the unconventional gas well fee) and 33 (relating to local ordinances) of the Act. By this Proposed Rulemaking Order (Order), the Commission proposes to implement regulations that will assist us in carrying out our administrative responsibilities contained in Chapter 23 of the Act.¹

¹ Section 501(b) of the Public Utility Code authorizes the Commission to make regulations "as may be necessary or proper in the exercise of its powers or for the performance of its duties." 52 Pa. Code § 501(b). Because the Commission is currently enjoined from carrying out its

BACKGROUND

On March 16, 2012, the Commission issued a Tentative Implementation Order addressing the Commission's responsibilities and proposing procedures to carry out the administrative responsibilities contained in Chapters 23 and 33 of the Act. That order solicited comments from interested parties. Following review of submitted comments, we issued an Implementation Order on May 10, 2012, addressing those comments and other issues associated with implementation of Chapter 23 of Act 13.

Subsequently, Petitions for Reconsideration were filed to the May 10, 2012 Order. On July 19, 2012, we issued a Reconsideration Order regarding Chapter 23 of Act 13, further detailing our treatment of vertical unconventional gas wells, assessments, caps on distribution amounts received by a municipality, and producer reporting requirements. On September 28, 2012, a Petition for Amendment and Clarification of our May 10, 2012 Implementation Order was filed. On December 20, 2012, we issued a Clarification Order Regarding Chapter 23 setting forth our treatment of conductor pipes, reclassification of wells, plugging of wells, disputes and refunds, and other additional matters. This rulemaking largely represents a codification of the previous determinations made by the Commission in its aforementioned Implementation, Reconsideration and Clarification orders regarding Chapter 23.²

As for Chapter 33 of the Act, on July 26, 2012, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued a decision declaring Section 3304 of the Act unconstitutional, thereby enjoining the enforcement of Section 3304 (relating to uniformity of local ordinances). *See Robinson Twp. v. Commonwealth*, 52 A.3d 463 (Pa.

responsibilities contained in Chapter 33 of the Act, the regulations proposed by the Commission herein are limited to the performance of the Commission's duties under Chapter 23 of the Act.

² Because this rulemaking is largely based on previous Commission determinations as set forth in our Implementation, Reconsideration and Clarification orders regarding Chapter 23, none of which have been appealed, the Commission does not anticipate receiving comments from parties regarding such determinations contained herein.

Cmwlt. Ct. 2012). On October 25, 2012, the Commonwealth Court issued another decision enjoining the enforcement of Section 3305 of the Act (relating to the review of municipal ordinances for compliance with the Municipalities Planning Code and Chapters 32 and 33 of the Act). *Robinson Township, et al. v. Commonwealth et al.*, No. 284 M.D. 2012, filed October 25, 2012. Both of these Commonwealth Court decisions were appealed to the Supreme Court of Pennsylvania (Supreme Court). On July 25, 2013, the Supreme Court quashed our appeal of the October 25, 2012 Commonwealth Court decision.³ Consistent with these decisions and the pending appeals, the Commission is currently enjoined from carrying out any of its administrative responsibilities concerning local ordinance reviews under Chapter 33 of the Act.

PROPOSED RULEMAKING

The Commission now proposes to implement regulations that will assist us in carrying out our administrative responsibilities under Chapter 23 of the Act. We will address our responsibilities under Chapter 33 of the Act in a separate rulemaking if and when the current injunctions are lifted. The regulations proposed by the Commission regarding Chapter 23 below are incorporated into Annex A. After a review of public comments filed in response to this Order, the Commission will adopt final regulations.

Imposition of Unconventional Gas Well Fee (Impact Fee).

³ On August 6, 2013, the Commission filed an Application for Reconsideration of Order dated July 25, 2013, quashing Notice of Appeal and an Application to Resubmit Case regarding our appeal of the July 26, 2012 Commonwealth Court decision.

Pursuant to Section 2302 of Act 13, the governing body of a county that has unconventional gas wells⁴ located within its borders may elect to adopt an ordinance⁵ imposing the unconventional gas well fee (known as the “impact fee”) on wells spud⁶ in that county. 58 Pa. C.S. § 2302(a)-(a.1). A county electing to adopt an ordinance to impose the impact fee must notify the Commission and give public notice of its intent to adopt the ordinance. §2302(a.1). In order for the Commission to timely administer the collection and disbursement of impact fees, a county electing to adopt an ordinance to impose the fee must notify the Commission, in the form of an official filing directed to the Secretary of the Commission⁷ together with a verified copy of the ordinance, within thirty (30) days after adoption of the ordinance. *Implementation Order Regarding Chapter 23*, Docket No. M-2012-2288561, entered May 10, 2012, at 3-5.

Any county that does not adopt an ordinance imposing the impact fee on wells spud within its borders shall be prohibited⁸ from receiving funds pursuant to Sections 2314(d)(1) (relating to distributions from the Unconventional Gas Well Fund) and 2315(a.1)(3) and (5) (relating to distributions from the Marcellus Legacy Fund) of the Act. 58 Pa. C.S. § 2302(a.3)(1). This prohibition on the receipt of funds by the county will remain in effect until the county adopts an ordinance imposing the impact fee.

⁴ “Unconventional gas well” is defined as “a bore hole drilled or being drilled for the purpose of or to be used for the production of natural gas from an unconventional formation.” 58 Pa. C.S. § 2301. “Unconventional formation” is defined as “a geological shale formation existing below the base of the Elk Sandstone or its geologic equivalent stratigraphic interval where natural gas generally cannot be produced at economic flow rates or in economic volumes except by vertical or horizontal well bores stimulated by hydraulic fracture treatments or by using multi-lateral well bores or other techniques to expose more of the formation of the wellbore.” *Id.*

⁵ An ordinance imposing the impact fee must include specific language as required by Section 2302(a.2) of the Act. 58 Pa. C.S. § 2302(a.2).

⁶ “Spud” is defined as “the actual start of drilling on an unconventional gas well.” 58 Pa. C.S. § 2301.

⁷ Ordinances imposing the impact fee must be filed in accordance with the Commission’s filing procedures at 52 Pa. Code Chapter 1.

⁸ This prohibition on the receipt of funds by the county extends to all municipalities located within that county. *May 10, 2012 Implementation Order* at 3-4. Municipalities located within a county failing to impose the impact fee will, however, remain eligible to receive funds from the Marcellus Legacy Funds, as discussed *infra*.

§ 2302(a.3)(2). This prohibition will expire and funds may be received by the county, and municipalities located within that county, for the calendar year *following* the adoption of an ordinance imposing the fee. *Id.* Because there may be a lag between ordinance adoption and fee distribution, the deadline for ordinance adoption is December 31 of each year in order for a county to be eligible to receive funds in the next calendar year. *May 10, 2012 Implementation Order* at 5.

In addition to the procedures set forth above for county impact fee imposition, the Act establishes an alternative fee imposition mechanism. Section 2302(a.4) of the Act provides that if a county's governing body did not timely impose the impact fee on unconventional gas wells within that county, the municipalities within that county could have compelled the imposition of the impact fee on every unconventional gas well located within the county by resolution.⁹ 58 Pa. C.S. § 2302(a.4). These resolutions were required to be adopted within a certain time frame from the effective date of the Act and were the exclusive mechanism for municipalities to impose the impact fee in the event an eligible county did not choose to do so. *May 10, 2012 Implementation Order* at 4. This was a one-time opportunity for municipalities to impose the impact fee. *Id.* Act 13 does not provide for any subsequent opportunities for municipalities to adopt such resolutions to override a county's decision to not impose the impact fee going forward. *Id.*

In the event the impact fee is not imposed in an eligible county, by any method, the municipalities within that county are, however, still entitled to receive funds from the Marcellus Legacy Fund, if applicable (even though the county remains ineligible). Pursuant to Section 2302(a.3) of the Act, an eligible county that fails to adopt an ordinance imposing the impact fee is prohibited from receiving funds under both Sections

⁹ The Act provides that the impact fee shall take effect if, within not more than 120 days after the effective date of Section 2302(a.4)(2), the governing bodies of at least half of the municipalities located in a county or municipalities representing at least 50% of the population of the county adopt resolutions to impose the impact fee on all unconventional gas wells spud in the county. 58 Pa. C.S. § 2302(a.4)(2).

2314(d)(1) (relating to distributions from the Unconventional Gas Well Fund) and 2315(a.1)(3) and (5) (relating to distributions from the Marcellus Legacy Fund). 58 Pa. C.S. §§ 2314(d)(1) and 2315(a.1)(3) and (5). However, pursuant to Section 2302(a.3)(5), a municipality located within a county that does not adopt an ordinance imposing the fee, and does not adopt a resolution imposing the fee, is prohibited from receiving funds only under Section 2314(d) (relating to distributions from the Unconventional Gas Well Fund). 58 Pa. C.S. § 2302(a.3)(5). Accordingly, municipalities located within a county failing to impose the impact fee will continue to remain eligible to receive funds distributed under Section 2315 (via the Marcellus Legacy Fund), if applicable.

Unconventional Gas Wells Subject to the Impact Fee.

The impact fee adopted under Section 2302 of the Act will be imposed on every oil and gas producer, as defined in Section 2301 (producer), and will apply to unconventional gas wells spud within the Commonwealth. 58 Pa. C.S. § 2302(b). The Commission has determined, however, that only wells drilled for the purpose of production of natural gas will be subject to the fee. *May 10, 2012 Implementation Order* at 7. Wells drilled for other purposes, e.g., monitoring, geologic logging or other collateral purposes, are not subject to the fee.¹⁰ *Id.* In addition to these purpose limitations, the Commission has made additional determinations as to whether specific unconventional gas wells are subject to the fee as follows:

A) Nonproducing Unconventional Gas Wells.

Section 2302(b.1) of the Act provides for a suspension of payment of the impact fee after two years, following payment of the initial impact fee, for a spud well that “is subsequently capped or does not produce natural gas in quantities greater than that of a

¹⁰ Collateral purposes do not include spudding a well but immediately capping it for future production. *May 10, 2012 Implementation Order* at 7.

stripper well.”¹¹ 58 Pa. C.S. § 2302(b.1). Based on this language, the Commission has determined that horizontal unconventional gas wells will be subject to a three year minimum impact fee, even if subsequently capped or production falls below designated production levels. *May 10, 2012 Implementation Order* at 8. On the other hand, vertical gas wells¹² are not subject to this three year minimum fee when falling below designated production levels. *Reconsideration Order Regarding Chapter 23*, Docket No. M-2012-2288561, entered July 19, 2012 at 4. The Commission has determined that vertical gas wells failing to produce natural gas in quantities greater than that of a stripper well during any calendar month are not subject to the three year minimum fee applicable to horizontal unconventional gas wells because (1) Section 2302(f) of the Act (regarding the impact fee applicable to a vertical gas well) does not reference Section 2302(b.1) (regarding the three year minimum fee), (2) a vertical gas well which falls below certain production levels is no longer, by definition, a vertical gas well and (3) legislative history dictates that a “vertical unconventional gas well shall only pay a fee if it is producing in quantities greater than those of a stripper well.”¹³ *Id.* Therefore, unlike horizontal unconventional gas wells, vertical gas wells are not subject to the three year minimum fee set forth in Section 2302(b.1) of the Act.

As set forth above, vertical gas wells derive their status based on production levels. Those production levels are determined per day during any calendar month. 58 Pa. C.S. § 2301. If a vertical gas well qualifies as a vertical gas well, via production levels, during any calendar month in a calendar year, that well will be subject to the impact fee. 58 Pa. C.S. §§ 2301, 2302(f).

11 “Stripper well” is defined as “an unconventional gas well incapable of producing more than 90,000 cubic feet of gas per day during any calendar month, including production from all zones and multilateral well bores at a single well, without regard to whether the production is separately metered.” 58 Pa. C.S. § 2301.

12 “Vertical gas well” is defined as “an unconventional gas well which utilizes hydraulic fracture treatment through a simple vertical well bore and produces natural gas in quantities greater than that of a stripper well.” 58 Pa. C.S. § 2301.

13 See Conference Committee Report for HB 1950.

In order for the Commission to determine whether a vertical gas well is subject to the impact fee, producers must verify certain production information for the corresponding reporting year to the Commission to ensure that a particular well qualifies as a vertical gas well and is therefore subject to the fee. *July 19, 2012 Reconsideration Order* at 5. All vertical gas wells on the Department of Environmental Protection's (DEP) spud list as of December 31 of each year will be subject to the fee for that year unless the producer verifies to the Commission that a particular well did not produce natural gas in quantities greater than that of a stripper well *during any calendar month* in the reporting year.¹⁴ *Id.* This means that even if a vertical gas well produces natural gas in quantities greater than that of a stripper well in only *one* month of a calendar year, that vertical well will be subject to the fee for that year. *Id.* Producers must verify on their annual producer report forms filed with the Commission, by April 1 of each year, certain production level information for all vertical gas wells for which a fee is not due.¹⁵ *Id.*

As previously discussed, horizontal unconventional gas wells are subject to the three year minimum fee regardless of subsequent capping or production levels. However, following the second year after paying the initial impact fee, the fee shall be suspended if the horizontal unconventional gas well has been capped and/or is not producing natural gas in quantities greater than that of a stripper well.¹⁶ 58 Pa. C.S. § 2302(b.1). In determining whether a horizontal unconventional gas well is producing at levels greater

¹⁴ In order to determine average daily production levels for a vertical gas well, the Commission expects producers to divide the well's monthly production by the number of days the well is in production in the relevant calendar month(s). *May 10, 2012 Implementation Order* at 7.

¹⁵ The Commission has developed a "Producer Well Report" form for use by producers that is available on our website at http://www.puc.state.pa.us/filing_resources/issues_laws_regulations/impact_fee_collection/producer_information.aspx.

¹⁶ Section 2302(b.1) of the Act provides that the impact fee shall be suspended if "a spud unconventional gas well begins paying the fee imposed under this section and is subsequently capped or does not produce natural gas in quantities greater than that of a stripper well within two years after paying the initial fee." 58 Pa. C.S. § 2302(b.1). Therefore, following payment of the three year minimum fee, the fee will be suspended for horizontal unconventional gas wells that are capped and/or not producing natural gas in quantities greater than that of a stripper well.

than that of a stripper well, the Commission will apply the same production calculation treatment to horizontal unconventional gas wells as it currently does to vertical gas wells, discussed *supra*. Accordingly, producers must verify on their annual producer report forms filed with the Commission, by April 1 of each year, certain production level information for all horizontal unconventional gas wells for which a fee is not due.

B) Plugged Unconventional Gas Wells.

Section 2302(e) of the Act provides that payment of the impact fee “shall cease” upon certification to the Department that a well has ceased production and has been plugged in accordance with DEP regulations. 58 Pa. C.S. § 2302(e). Because, pursuant to Section 2302(b) of the Act, the impact fee is due upon spudding, regardless of when the spudding occurred, the initial impact fee is due from all spud wells even if the well is subsequently plugged. *May 10, 2012 Implementation Order* at 8. This is the case even for a well that is spud and plugged in the same calendar year. *Clarification Order Regarding Chapter 23*, Docket No. M-2012-2288561, entered December 20, 2012 at 9.

In the case of a vertical gas well, the impact fee is triggered and accrues at the moment the well meets minimum production criteria during any month in a given calendar year. *Id.* If a vertical gas well is later plugged during a year in which it had met that minimum production level, the fee is nonetheless payable since it had accrued *upon* that well meeting the production criteria set forth in Section 2301 of the Act. *Id.* This is consistent with Act 13’s requirement that the impact fee is due and owing *upon* spudding, even if later plugged during the same calendar year. *Id.*

As for a horizontal unconventional gas well, no similar minimum production criteria applies as of the date of this Order (as no horizontal unconventional gas wells have yet completed payment of the three year minimum impact fee). Rather, the impact fee for a horizontal unconventional gas well is currently based on the well’s status as a

permitted horizontal unconventional gas well. *Id.* Therefore, assuming the horizontal unconventional gas well was spud in a prior calendar year, the impact fee is triggered and accrues for that calendar year. *Id.* This is the case for a well that is either plugged or not plugged during that calendar year. *Id.*

Accordingly, when a horizontal unconventional gas well is plugged in a given year, the fee has already accrued for that year and triggers a payment obligation. *Id.* The fee then ceases in the calendar year *following* the year in which the well was plugged as certified to the Department. *Id.* It is important to note that this determination is only applicable to horizontal unconventional gas wells that have not yet completed payment of the three year minimum fee as set forth in Section 2302(b.1) of the Act.

Following payment of the three year minimum fee, horizontal unconventional gas wells will be treated in the same manner as vertical gas wells in terms of calculating production levels to determine the applicability of the fee, as discussed *supra*. Therefore, following the three year minimum payment period, only a horizontal unconventional gas well that is later plugged during a year in which it met minimum production levels will be subject to the fee since the fee had accrued *upon* that well meeting the production criteria set forth in Section 2301 of the Act.

Pursuant to Act 13, payment of the impact fee ceases upon certification (Certification Date) to DEP by a producer that the unconventional gas well has ceased production and has been plugged according to DEP regulations. 58 Pa. C.S. § 2302(e). Consistent with the Act, the Certification Date to DEP is the date an acceptable Certificate of Well Plugging is filed with and time-stamped by DEP pursuant to 58 Pa. C.S. § 3220 (relating to plugging requirements) and 25 Pa. Code § 78.91 (relating to general plugging provisions). The Certification Date is the date of the official DEP time-stamp on the Certificate of Well Plugging. The date plugging was physically completed, as supplied by the producer on the Certificate of Well Plugging, is not the Certification

Date to DEP for purposes of 58 Pa. C.S. § 2302(e). The Commission encourages producers to maintain time-stamped copies of all Certificates of Well Plugging filed with DEP.

C) Reclassified Unconventional Gas Wells.

Prior to the payment of the three year minimum fee set forth in Section 2302(b.1) of the Act, the impact fee for a horizontal unconventional gas well accrues upon spudding or at the beginning of a calendar year for wells spud previously. Following the three year minimum payment period for a horizontal unconventional gas well and for all vertical gas wells, spudding does not trigger the impact fee, but rather the fee is triggered by the satisfaction of required production levels during any calendar month. Recognizing the myriad of scenarios attendant to reclassification, the Commission has determined that a reclassified well should pay the fee for a horizontal unconventional gas well if classified as such at any point in the reclassification year.¹⁷ *December 20, 2012 Clarification Order* at 7-8.

The date an acceptable reclassification document¹⁸ amending a well's classification is filed with and time-stamped by DEP, pursuant to 58 Pa. C.S. § 3211 (relating to well permits); 58 Pa. C.S. § 3222 (relating to well reporting requirements); and 25 Pa. Code, Chapter 78, Subchapters B (relating to permits) and E (relating to well reporting), is the Reclassification Date. The Reclassification Date is the date of the official DEP time-stamp on that document. The Commission encourages producers to maintain time-stamped copies of all documents amending well classifications filed with DEP.

¹⁷ The Commission believes it is a fair result to require payment of the horizontal unconventional gas well impact fee for a well classified as such during any part of the year in which that well is otherwise subject to the fee given the greater impact occasioned by horizontal unconventional gas wells as compared to vertical gas wells. *December 20, 2012 Clarification Order* at 8.

¹⁸ A producer must file with DEP a Well Record, in order to reclassify an unconventional well from horizontal to vertical, or a Permit Application to Drill and Operate an Unconventional Well, in order to reclassify an unconventional well from vertical to horizontal.

D) Conductor Pipes.

Under Act 13, spudding is defined as “the actual start of drilling of an unconventional gas well.” 58 Pa. C.S. § 2301. The actual start of drilling of an unconventional well commences as soon as a drill bit penetrates the ground for the purpose of setting any length of casing or when a conductor pipe begins to be set by being driven into the ground. *December 20, 2012 Clarification Order* at 5-6. Because setting conductor pipe penetrates the land surface and constitutes the start of drilling, the Commission has determined that setting conductor pipe into the ground constitutes spudding, thereby triggering the impact fee. *Id.*

For impact fee purposes, conductor pipes will be treated as the well type dictated by the DEP drilling permit. *Id.* at 6. Accordingly, if conductor pipe is set at a well permitted as a *vertical* gas well, it will be treated as such for impact fee purposes. *Id.* Similarly, if conductor pipe is set at a well permitted as a *horizontal* unconventional gas well, it will be treated as such for impact fee purposes. *Id.*

In order for the Commission to accurately account for the current status of all types of unconventional gas wells, producers are required to update the Commission regarding any changes that may occur regarding their wells. 58 Pa. C.S. § 2304. Pursuant to Section 2304 of the Act, producers subject to the impact fee must notify the Commission of the following within thirty (30) days after the calendar month in which the change occurs: (1) the spudding of additional unconventional gas wells; (2) the initiation of production at an unconventional gas well; or (3) the removal of an unconventional gas well from production. *Id.* These changes must be filed with the Commission via a producer update report only if a designated event occurs.¹⁹ *July 19,*

¹⁹ The Commission has developed a “Monthly Producer Well Update Report” form for use by producers that is available on our website at http://www.puc.state.pa.us/filing_resources/issues_laws_regulations/impact_fee_collection/prod

2012 Reconsideration Order at 9. The due date for the report is thirty (30) days after the end of the calendar month in which the event occurred. *Id.* For example, if the event occurred on September 3, 2013, the report would be due October 30, 2013. *Id.*

We note here that if a producer determines that the well information provided by DEP to the Commission is incomplete or otherwise inaccurate, the producer should address that concern with DEP. *May 10, 2012 Implementation Order* at 12. This communication should be addressed to DEP in writing with a copy to the Commission. Similarly, local governments discovering a well discrepancy should address that discrepancy with DEP. *Id.* Again, this communication should be addressed to DEP in writing with a copy to the Commission. *Id.* Beyond this general information, the Commission believes that it is best for DEP to provide further guidance as to what is required of local governments in this regard. *Id.*

We note that the Commission will use the geographic information system as maintained by the Pennsylvania Department of Transportation (PennDOT) for purposes of determining municipal boundary lines and to calculate highway mileage used in certain distribution formulas contained in the Act. *See generally* 58 Pa. C.S. § 2314(d) (3). Any disputes regarding the accuracy of such information should be addressed to the appropriate forum with a copy of such dispute filed with the Commission. The Commission may withhold the distribution of any impact fees, or any part thereof, pending resolution of a dispute regarding such geographic information.

Any and all disputes regarding the accuracy of such geographic information must be resolved, and notice of the resolution filed with the Commission, on or before May 1 of the relevant distribution year in order for the Commission to accurately account for any resulting changes in impact fee distribution calculations for that year. Any disputes regarding this information resolved, or filing a notice of the resolution with the

Commission, after May 1 of any given distribution year will be corrected in the distribution year following resolution.

Calculation of Impact Fee.

The calculation of the impact fee is determined by a multi-year fee schedule set forth in the Act that is based on a number of factors including, but not limited to, when a well was spud and the annual average price of natural gas.²⁰ 58 Pa. C.S. §§ 2302(b)(1)-(b)(6). In addition to those factors, the impact fee may be annually adjusted to reflect any “upward changes” in the Consumer Price Index (CPI) for the Mid-Atlantic Region. § 2302(c). The Commission has interpreted this language in Section 2302(c) of the Act to mean that if there is no upward change in the CPI in a calendar year, no CPI adjustment will be made to the impact fee for that year.²¹ *May 10, 2012 Implementation Order* at 9.

The impact fee applicable to horizontal unconventional gas wells for each year is set forth in Sections 2302(b)(1)-(5) of the Act. *See* 58 Pa. C.S. §§2302(b)(1)-(5). The fee applicable to vertical gas wells shall be 20% of the fee established for horizontal unconventional gas wells. § 2302(f). Horizontal unconventional gas wells will be subject to the fee for a total period of fifteen (15) years, whereas vertical gas wells will be subject to the fee for a total period of ten (10) years. *See* §§ 2302(b)(1)-(5) and 2302(f).

In addition to the impact fees due for horizontal and vertical gas wells, Section 2303(c)(1) of the Act authorizes the Commission to impose an annual administrative charge of not more than \$50 per spud unconventional gas well to cover the actual costs incurred to administer and enforce the requirements of Act 13. § 2303(c)(1). This \$50

²⁰ “Average annual price of natural gas” is defined as “the arithmetic mean of the New York Mercantile Exchange (NYMEX) settled price for the near-month contract, as reported by the Wall Street Journal for the last trading day of each month of a calendar year for the 12-month period ending December 31.” 58 Pa. C.S. § 2301.

²¹ It should be noted that even if the CPI remains unchanged, the fee may change due to changes in the price of gas as provided for in Sections 2302(b)(1)-(b)(6) of the Act.

spud fee must be paid with the submission of impact fees by April 1 of each year. *Id.* Further, Sections 2303(c)(2) and (c)(3) of the Act establish procedures for the Commission to estimate, by June 30 of each year, its annual expenditures directly attributable to administration and enforcement of Chapter 23. §§ 2303(c)(2) and (c)(3). After subtracting any funds received from the \$50 per well spud fee and Section 2314(c.1) impact fee disbursement amounts received by the Commission, the Commission will assess any remaining balance of its estimated expenditures on all producers in proportion to the number of wells owned by each producer. *Id.* Payment of this additional assessment is due within thirty (30) days of receipt of a notice or invoice regarding the same from the Commission. *Id.*

In order to estimate its expenditures, the Commission has established time codes within the agency to track employee hours and costs associated with the administration of Act 13. *May 10, 2011²² Implementation Order* at 11. If any disputes are raised regarding the calculated assessment amounts, Act 13 provides that producers may challenge these amounts under the procedures set forth in in Section 510 of the Public Utility Code, 66 Pa. C.S. § 510(c), (d) and (e).²² 58 Pa. C.S. §2303(c)(3).

Pursuant to the Act, the allocation of this Commission assessment is to be made on “all producers subject to the administrative charge” (§ 2303(c)(2)), and, conversely, on “all producers subject to the unconventional gas well fee” (§ 2303(c)(3)). The Commission has determined that Section 2303(c)(3) of the Act establishes the proper methodology by limiting the assessment to “producers subject to the unconventional gas well fee,” as opposed to subjecting all producers to the assessment. 58 Pa. C.S. 2303(c)(3), *see also July 19, 2012 Reconsideration Order* at 5. This limitation also applies to the \$50 spud well fee established at 58 Pa. C.S. § 2303(c)(1). *July 19, 2012 Reconsideration*

²² An explanation of the procedure for challenging the assessment will be included with each notice of assessment. *May 10, 2012 Implementation Order* at 11.

Order at 5. Therefore, in summary, only producers subject to the impact fee will be subject to a Commission assessment and the \$50 spud well fee.

Collection of Impact Fee.

Act 13 requires all producers to file annual producer reports with the Commission detailing the number of its spud unconventional gas wells subject to the impact fee for the previous calendar year. 58 Pa. C.S. § 2303(b). As such, producers self-report their impact fee liability under Act 13. *Id.* These annual producer reports were due by September 1, 2012 (for the 2011 reporting year), and are due by April 1 for each year thereafter. *Id.* Along with this report, a producer is required to submit payment of the impact fee to the Commission.²³ *Id.* The impact fee due from a producer is calculated based on the number of qualifying wells that the producer lists on its annual producer reports. *Id.*

Any disputes regarding a producer's unconventional gas wells that are subject to the impact fee should be identified on the annual producer reports.²⁴ *December 20, 2012 Clarification Order* at 11. If a producer is disputing whether a particular well is subject to the impact fee, the producer should not pay the corresponding impact fee for the disputed well unless and until the dispute has been resolved. To the extent that there is a dispute regarding the accuracy of a producer's report, the Commission will address that dispute via the mechanisms established at Sections 2307-2313 of the Act.²⁵ *See* 58 Pa.

²³ The Commission realizes that producers may transfer certain interests in and to their unconventional gas wells to other producers. As such, the Commission has determined that the producer filing the annual producer report by April 1 of each year is responsible for paying the impact fee. *December 20, 2012 Clarification Order* at 12. Obviously, producers can proportion this fee among themselves in a private agreement involving a particular well. *Id.*

²⁴ If a producer does not file a well report as required by Section 58 Pa. C.S. § 2303(b) or files a false or fraudulent well report with the intent to evade the impact fee, the Commission may assess the total amount of impact fee owed at any time.

²⁵ Sections 2307-2313 of the Act set forth the mechanisms available to the Commission to enforce untimely and delinquent impact fees. 58 Pa. C.S. § 2307-2313. Act 13 does not provide dispute mechanisms for producers concerning the over-payment of impact fees.

C.S. §§ 2307-2313. These provisions will be enforced consistent with the Commission's general rules of practice and procedure found at 52 Pa. Code, Chapters 1, 3 and 5.

We note that we will utilize formal proceedings only after informal efforts reveal that a dispute cannot be resolved. *December 20, 2012 Clarification Order* at 11. The Commission will always seek informal resolution for impact fee disputes prior to initiating formal enforcement proceedings pursuant to Sections 2307-2313 of the Act. *Id.*

If the Commission is required to initiate formal enforcement proceedings pursuant to Sections 2307-2313 of the Act against a producer for untimely or delinquent impact fee payments, the Commission will refer the matter to its Bureau of Administration's Fiscal Office (Fiscal Office) and Bureau of Investigation and Enforcement. The Fiscal Office may initiate an enforcement proceeding by issuing a Notice of Amount Due pursuant to Section 2307(b) of the Act. 58 Pa. C.S. § 2307(b). This Notice of Amount Due will include a demand for payment of a particular producer's untimely or delinquent impact fee, notice of the amount of impact fee due and the basis for the determination. *Id.*

If a producer does not pay the untimely or delinquent impact fee as required by the Notice of Amount Due, the producer shall file a written response with the Commission regarding the matter within twenty (20) days of the date of service of the Notice of Amount Due.²⁶ If, however, the producer fails to pay the untimely or delinquent impact fee as required by the Notice of Amount Due and does not file a written response with the Commission, the producer may be deemed to be in default. On the other hand, if the producer fails to pay the untimely or delinquent impact fee in full as required by the Notice of Amount Due, but files a written response with the Commission in compliance with the procedures discussed above, the Fiscal Office will refer the matter to the Office of Administrative Law Judge (OALJ) for hearing and issuance of a Recommended

²⁶ The producer's written response should be filed pursuant to Section 1.11 of Title 52 of the Pennsylvania Code. 52 Pa. Code § 1.11.

Decision pursuant to the Commission's rules of practice and procedure found at 52 Pa. Code Chapters 1, 3 and 5. Following the adjudicatory proceeding before the OALJ, the Commission will issue a Final Order regarding the matter.

Based on the foregoing, the Commission may assess interest and penalties on untimely or delinquent impact fee payments as permitted by Sections 2307-2313 of the Act if (1) the producer fails to pay the delinquent impact fee in full in compliance with the Notice of Amount Due, (2) the producer fails to file a timely response with the Commission if no payment is made, or (3) after hearing, the Commission sustains the amount due by a final order. 58 Pa. C.S. §§ 2307-2313.

As previously discussed, subject to Commission enforcement if and when a dispute arises, producers are ultimately required to self-report their financial liability under the Act. *December 20, 2012 Clarification Order* at 11. Given the language and structure of Act 13, the Commission does not envision many situations where refunds of over-paid impact fees would be required.²⁷ *Id.* Additionally, the Act does not contain provisions for the refunding of impact fees after the impact fee funds have been distributed for a particular year. *Id.* As such, the Commission will only issue refunds or adjustments on a case-by-case basis if there is a classification or computational error in calculating the impact fee.

Refund requests regarding classification and computational errors must be filed within a certain period of time that will allow the Commission to process the request prior to impact fee distribution. In this fashion, producer impact fee refunds from prior years should not artificially decrease the distributions and allocations mandated by

²⁷ As previously set forth, if a producer is disputing whether particular wells are subject to the impact fee, the producer should not pay the corresponding impact fee for those "disputed" wells unless and until the dispute has been resolved. This practice will prevent over-payment issues from arising.

Section 2314 of the Act, 58 Pa. C.S. § 2314, to counties and municipalities in subsequent years.

Accordingly, we propose that producers must file a “Petition for Refund” with the Secretary of the Commission by May 1 following the April 1 impact fee payment due date. This 30-day refund petition period will provide the Commission sufficient time to process the petition for refund prior to releasing impact fee fund calculations to the Pennsylvania Department of Treasury for disbursement. Additionally, this refund petition period gives producers 30 days to review their *prior year*’s well records for errors *after* making payment to the Commission. Upon the expiration of this 30-day refund petition period, the Commission will not issue any refunds or adjustments of over-paid unconventional gas well fees whatsoever.

All petitions for refund filed with the Commission must be in writing and specify, in numbered paragraphs, all of the following: (1) the name, address and telephone number of the producer filing the petition for refund, (2) the unconventional gas well permit number, assigned by DEP, of the over-paid unconventional gas well(s) and (3) a detailed explanation of the classification or computational error causing the over-payment of the impact fee. We note that these requirements for filing petitions for refund are similar to our requirements for filing petitions for relief from Commission adjudications as set forth at 52 Pa. Code § 5.572.

Distribution of Impact Fee.

All impact fees imposed and collected under Chapter 23 of the Act must be deposited into the State Treasury fund known as the “Unconventional Gas Well Fund,”

which is to be administered by the Commission. 58 Pa. C.S. §§ 2314(a)-(b). After the impact fee funds have been deposited into the “Unconventional Gas Well Fund,” the Act provides for detailed allocations for distribution of these funds to various recipients including conservation districts, state agencies, local governments and to the “Marcellus Legacy Fund.” See §§ 2314(c), (c.1) and (c.2).

Act 13 specifically earmarks certain “off the top” allocations from the Unconventional Gas Well Fund to conservation districts and state agencies to offset the statewide impact of drilling. § 2314(c)-(c.1). Additionally, for the first three years of the program, a fixed amount “off the top” is distributed to the “Marcellus Legacy Fund.” § 2314(c.2). After the distributions to conservation districts and state agencies and the fixed distribution to the Marcellus Legacy Fund, 60% of the remaining revenue in the Unconventional Gas Well Fund, after the fixed distribution to the Housing Affordability and Rehabilitation Enhancement Fund (\$2.5 million for the 2011 reporting year and \$5 million each year thereafter), is distributed by the Commission to counties and municipalities to be used for thirteen specific purposes set forth in Section 2314(g) of the Act. § 2314(d) and (f).

Distributions to counties and municipalities from the Unconventional Gas Well Fund are based on a formula whose denominator is “the number of spud unconventional gas wells in this Commonwealth.” See §§ 2314(d)(1), (d)(2) and (d)(3). The intention of the legislation is to distribute this *entire* 60% amount to entities described in Sections 2314(d)(1), (d)(2) and (d)(3) of the Act. *May 10, 2012 Implementation Order* at 15. At the same time, all spud wells may not be subject to the impact fee under Act 13 if a county declines to adopt an ordinance imposing the fee. *Id.* Accordingly, for purposes of calculating the disbursement, the Commission has determined that these subsections of the Act refer to the total number of spud unconventional gas wells subject to the impact fee under Act 13. *Id.*

Following the “off the top” allocations and the 60% distribution to counties and municipalities to be used for Section 2314(g) purposes, 40% of the remaining revenue in the Unconventional Gas Well Fund is distributed to the Marcellus Legacy Fund and appropriated to the Commission for disbursement.²⁸ 58 Pa. C.S. § 2315. Under the Act, the Commission is required to disburse the impact fees collected from the Unconventional Gas Well Fund and Marcellus Legacy Fund by December 1, 2012, and by July 1 of each year thereafter. §§ 2314(d) and 2315(a.1). The Commission has developed the algorithms and computer programs necessary to distribute the Unconventional Gas Well Funds and Marcellus Legacy Funds in accordance with the foregoing statutory formulas.

As for the 60% distribution from the Unconventional Gas Well Fund to counties and municipalities for Section 2314(g) purposes, the Act places a restriction or cap on the amount of funds municipalities are eligible to receive.²⁹ 58 Pa. C.S. § 2314(e). Section 2314(e) of the Act provides that the amount allocated to each municipality from the Unconventional Gas Well Fund shall not exceed the greater of \$500,000 or 50% of the municipality’s total budget for the prior fiscal year “beginning with the 2010 budget year and continuing every year thereafter, adjusted to reflect any upward changes in the Consumer Price Index.” *Id.* Based on this language, the Commission has determined that the calculation of the cap will require an annual submission of municipal budget information for the prior fiscal year. *July 19, 2012 Reconsideration Order* at 7. In

²⁸ The Marcellus Legacy Fund, as defined in Section 2315 of the Act, is a fund established in the State Treasury for the deposit of 40% of the remaining revenue following distribution under Section 2314(c), (c.1) and (c.2) from fees collected for 2011 and thereafter. 58 Pa. C.S. § 2315. The proceeds of this fund are to be distributed as follows: (1) 20% to the Commonwealth Financing Agency for grants related to acid mines, abandoned wells and water quality; (2) 10% to the Environmental Stewardship Fund for preservation and protection projects; (3) 25% to the Highway Bridge Fund; (4) 25% for water and sewer projects; (5) 15% for county conservation projects; and (6) 5% to the Department of Community and Economic Development. §2315(a.1). Section 2314(c.2) provides for additional amounts to be deposited into the Marcellus Legacy Fund for distribution to DEP for the Natural Gas Energy Development Program. § 2314(c.2).

²⁹ This restriction is not applicable to counties receiving funds from the 60% distribution from the Unconventional Gas Well Fund. See 58 Pa. C.S. § 2314(e).

addition to using annually updated municipal budget information, the CPI adjustments contained in Section 2314(e) of the Act apply to both the \$500,000 figure as well as to the submitted budget figure. *Id.* at 8.

In order for the Commission to correctly determine the cap that is applicable to the 60% distribution from the Unconventional Gas Well Fund to each municipality, the Commission has established March 1 of each year as the deadline for submission of the prior year's final approved budget reports.³⁰ *December 20, 2012 Clarification Order* at 13. To illustrate, the municipal budget reports for 2014 will be due to the Commission by March 1, 2015, and so forth. *Id.* Municipalities that fail to properly file their budget reports with the Commission will be assumed to be limited to a \$500,000 CPI adjusted maximum distribution. *Id.*; 58 Pa. C.S. § 2314(e).

The budget information that must be submitted to the Commission is the municipality's "final approved budget." *July 19, 2012 Reconsideration Order* at 8. The Commission expects municipalities to report the budget amount that has received final approval by the municipality's governing body. *Id.* at 9. This final approved budget should include all planned expenditures for the relevant calendar year, funded by whatever sources of revenues the local government had anticipated for that calendar year. *May 10, 2012 Implementation Order* at 17. This will allow municipalities to accurately report budget amounts to the Commission. *July 19, 2012 Reconsideration Order* at 9.

As previously mentioned, the funds distributed as part of the 60% distribution to counties and municipalities from the Unconventional Gas Well Fund are required to be

³⁰ The Commission has developed a "Municipality Approved Budget Report" form for use by municipalities that is available on our website at http://www.puc.state.pa.us/filing_resources/issues_laws_regulations/impact_fee_collection/local_gov_reporting_requirements.aspx. We note that although these budget forms are currently filed in paper form, the Commission anticipates that municipalities will be able to file these reports electronically in the future.

used for one of the thirteen purposes associated with natural gas production from unconventional gas wells within the county or municipality, as set forth in Section 2314(g) of the Act. 58 Pa. C.S. § 2314(g). These purposes are as follows:

- (1) Construction, reconstruction, maintenance and repair of roadways, bridges and public infrastructure.
- (2) Water, storm water and sewer systems, including construction, reconstruction, maintenance and repair.
- (3) Emergency preparedness and public safety, including law enforcement and fire services, hazardous material response, 911, equipment acquisition and other services.
- (4) Environmental programs, including trails, parks and recreation, open space, flood plain management, conservation districts and agricultural preservation.
- (5) Preservation and reclamation of surface and subsurface waters and water supplies.
- (6) Tax reductions, including homestead exclusions.
- (7) Projects to increase the availability of safe and affordable housing to residents.
- (8) Records management, geographic information systems and information technology.
- (9) The delivery of social services.
- (10) Judicial services.
- (11) For deposit into the county or municipality's capital reserve fund if the funds are used solely for a purpose set forth in Section 2314(g) of the Act.
- (12) Career and technical centers for training of workers in the oil and gas industry.
- (13) Local or regional planning initiatives under the act of July 31, 1968 (P.L. 805, No. 247), known as the Pennsylvania Municipalities Planning Code.

58 Pa. C.S. § 2314(g). All counties and municipalities receiving funds from the Unconventional Gas Well Fund for the foregoing purposes must annually submit, on or before April 15 of each year, information to the Commission on a form prepared by the Commission that sets forth the amount and use of the funds received in the prior calendar year.³¹ 58 Pa. C.S. § 2314(h)(2). In order to comply with this requirement, the Commission has developed an Unconventional Gas Well Fund Usage Report for use by counties and municipalities that is available on our website at http://www.puc.state.pa.us/filing_resources/issues_laws_regulations/impact_fee_collection/local_gov_reporting_requirements.aspx.³² *May 10, 2012 Implementation Order* at 16.

When completing the Unconventional Gas Well Fund Usage Report Form, counties and municipalities must report all funds *expended on or committed to* one of the thirteen purposes set forth in Section 2314(g) of the Act. *May 10, 2012 Implementation Order* at 16. As such, counties and municipalities must report the use of these funds in at least one of the thirteen categories on the form and the amount entered on Line 14 of the form, labeled “Total Fund Usage,” must equal the amount entered in the “Total Amount of Funds Received” space. A county or municipality committing funds to a capital reserve account pursuant to Section 2314(g)(11) of the Act is not required to report the later expenditure of the funds from such an account.³³

Pursuant to Section 2314(h)(2) of the Act, these Unconventional Gas Well Fund Usage Reports must be published annually on the county’s or municipality’s publicly

³¹ Counties receiving funds distributed from the Commission through the Marcellus Legacy Fund are not required to submit an accounting of the expenditure of these funds. *See generally* 58 Pa. C.S. § 2315.

³² We note that although these report forms are currently filed in paper form, the Commission anticipates that counties and municipalities will be able to file these reports electronically in the future.

³³ We note that because the Act only permits funds to be placed in a capital reserve fund “if the funds are solely for a purpose set forth in this subsection” (Section 2314(g)), funds later taken from the capital reserve funds for expenditure will necessarily need to be used for one of the authorized purposes set forth in Section 2314(g) of the Act. 58 Pa. C.S. § 2314(g).

accessible website. 58 Pa. C.S. § 2314(h)(2). The Commission has determined that it will allow those municipalities that do not maintain a website to make these reports public in the same manner as that municipality would make public other actions taken by it. *May 10, 2012 Implementation Order* at 17. Municipalities do not need to seek a waiver from the Commission in this regard. *Id.* However, these reports must be available from those municipalities for public viewing upon request.³⁴ *Id.* The reports also will be available via the Commission's Secretary's Bureau and website. *Id.*

Although the Commission is charged with collecting the Unconventional Gas Well Usage Report forms on an annual basis, neither Act 13 nor the Public Utility Code, 66 Pa. C.S. § 101, provide the Commission with any authority to conduct audits or investigations into the expenditure or use of such funds. *See* 58 Pa. C.S. 2314(h)(2). Rather, the Commission is merely responsible for collecting these report forms. *Id.* We note, however, that other state agencies including the Department of Auditor General, Office of Attorney General and County District Attorney Offices, the Department of Community and Economic Development and the State Ethics Commission have general audit authority over county and municipal expenditures. 72 Pa. C.S. § 403. As such, the reported expenditures from the Unconventional Gas Well Fund will be subject to government oversight and audit at the state level.

CONCLUSION

³⁴ We note that certain counties have posted all of their municipality's Unconventional Gas Well Fund Usage Report forms on the county website. Although not required by the Act, the Commission does not take issue with this practice. However, if these reports are not posted on the municipality's website, even if published to the county website, the municipality must still make these reports public in the same manner as it makes other actions taken by it public and must make the reports available for public viewing upon request, both as required by the Commission's *May 10, 2012 Implementation Order*.

The proposed regulations issued for comment by this Order are intended to assist the Commission in carrying out our administrative responsibilities contained in Chapter 23 of Act 13. As previously noted, the Commission will initiate a second rulemaking process if and when the current injunctions regarding our administrative responsibilities under Chapter 33 of the Act are lifted. The Commission, therefore, formally commences its rulemaking process to adopt new regulations regarding Chapter 23 of Act 13 consistent with Annex A to this Order.

Accordingly, pursuant to Sections 501, 504, 523, 1301, 1501, and 1504, of the Public Utility Code, 66 Pa. C.S. §§ 501, 504, 523, 1301, 1501, and 1504, and Sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); Section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and Section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231-7.234, we are considering adopting the proposed regulations as set forth in Annex A, attached hereto; **THEREFORE,**

IT IS ORDERED:

1. That a proposed rulemaking be opened to consider the regulations set forth in Annex A.
2. That the Secretary shall submit this Proposed Rulemaking Order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.
3. That the Secretary shall submit this Proposed Rulemaking Order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.

4. That the Secretary shall certify this Proposed Rulemaking Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. That an original of any written comments referencing the docket number of the proposed regulations be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265.

6. That a copy of this Proposed Rulemaking Order and Annex A shall be served on the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania Department of Environmental Protection, the Pennsylvania Department of Transportation and all parties of record at Docket No. M-2012-2288561.

7. That the contact person for legal matters for this proposed rulemaking is Krystle J. Sacavage, Assistant Counsel, Law Bureau, (717) 787-5262. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta", written in a cursive style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 17, 2013

ORDER ENTERED: October 17, 2013

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart H. UNCONVENTIONAL GAS WELL IMPACT FEE ACT
CHAPTER 131. UNCONVENTIONAL GAS WELL FEE (IMPACT FEE)

§ 131.1. General provisions.

- (a) Definitions. The following words and terms when used in this chapter shall have the following meaning, unless the context clearly indicates otherwise:

Commission – The Pennsylvania Public Utility Commission.

Conductor pipe – A length of pipe or several pipes welded or threaded together that prevents loose soil and overburden from collapsing into the wellbore while additional lengths or strings of casing are set.

Department – The Department of Environmental Protection of the Commonwealth.

PennDOT – The Pennsylvania Department of Transportation.

Producer – A person or its subsidiary, affiliate or holding company that holds a permit or other authorization to engage in the business of severing natural gas for sale, profit or commercial use from an unconventional gas well in this Commonwealth. The term may not include a person or its subsidiary, affiliate or holding company that severs natural gas from a site used to store natural gas that did not originate from that site.

Spud – The actual start of drilling of an unconventional gas well.

Stripper well – An unconventional gas well incapable of producing more than 90,000 cubic feet of gas per day during any calendar month, including production from all zones and multilateral well bores at a single well, without regard to whether the production is separately metered.

Unconventional formation – A geological shale formation existing below the base of the Elk Sandstone or its geologic equivalent stratigraphic interval where natural gas generally cannot be produced at economic flow rates or in economic volumes except by vertical or horizontal well bores stimulated by hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation to the well bore.

Unconventional gas well – A bore hole drilled or being drilled for the purpose of or to be used for the production of natural gas from an unconventional formation.

Vertical gas well – An unconventional gas well which utilizes hydraulic fracture treatment through a single vertical well bore and produces natural gas in quantities greater than that of a stripper well.

- (1) Other words and terms not defined in subsection (a) shall have the meaning ascribed to them under 58 Pa. C.S. § 2301 (the Unconventional Gas Well Impact Fee Act of 2012).
- (b) Filing. Filings made with the Commission under this chapter shall be made under the Commission's filing procedures at 52 Pa. Code, Chapter 1 (relating to rules of administrative practice and procedure).

§ 131.2. Imposition of unconventional gas well fee.

- (a) General rule. The governing body of a county that has unconventional gas wells located within its borders may elect to adopt an ordinance imposing the unconventional gas well fee, as set forth in 58 Pa. C.S. 2302 (relating to the unconventional gas well fee), on unconventional gas wells spud in that county.
- (b) Notice to the Commission. A county electing to adopt an ordinance to impose the unconventional gas well fee shall notify the Commission and give public notice of its intent to adopt the ordinance.
 - (1) Notice required. A county shall notify the Commission within 30 days after adoption of an ordinance by filing a verified copy of the adopted ordinance with the Secretary of the Commission.
- (c) Prohibition on receipt of unconventional gas well fee funds. A county that does not adopt an ordinance imposing the unconventional gas well fee on unconventional gas wells spud within its borders shall be prohibited from receiving funds under 58 Pa. C.S. § 2314(d)(1) (relating to the distribution of unconventional gas well fee funds from the Unconventional Gas Well Fund) and 58 Pa. C.S. §§ 2315(a.1)(3) and (5) (relating to the distribution of unconventional gas well fee funds from the Marcellus Legacy Fund). This prohibition on the receipt of unconventional gas well fee funds under 58 Pa. C.S. § 2314(d)(1) shall apply to municipalities located within a county failing to impose the unconventional gas well fee. Municipalities located within a county failing to impose the unconventional gas well fee shall remain eligible to receive unconventional gas well funds under 58 Pa. C.S. § 2315(a.1)(3) and (5).

- (1) Period of prohibition. The prohibition on the receipt of unconventional gas well fee funds under subsection (c) shall remain in effect until a county adopts an ordinance imposing the unconventional gas well fee.
- (2) Expiration of prohibition. The prohibition on the receipt of unconventional gas well fee funds under subsection (c) shall expire and a county, and municipalities located within that county, shall become eligible to receive unconventional gas well fee funds for the calendar year following the adoption of an ordinance imposing the unconventional gas well fee. To be eligible to receive unconventional gas well fee funds in a given calendar year, a county shall adopt an ordinance to impose the unconventional gas well fee no later than December 31 of the prior calendar year.
- (d) No alternative unconventional gas well fee imposition. Other than the procedures set forth in this section regarding county imposition of the unconventional gas well fee, there are no alternative mechanisms for unconventional gas well fee imposition by municipalities.

§ 131.3. Unconventional gas wells subject to unconventional gas well fee.

- (a) Applicability of unconventional gas well fee. The unconventional gas well fee adopted under 58 Pa. C.S. § 2302 and in accordance with § 131.2 (relating to imposition of the unconventional gas well fee) shall be imposed on every oil and gas producer and shall apply to unconventional gas wells spud within the Commonwealth for the purpose of natural gas production. Unconventional gas wells spud for purposes other than natural gas production, including monitoring, geologic logging or other collateral purposes, are not subject to the unconventional gas well fee.
- (b) Classification of unconventional gas wells. An unconventional gas well shall be classified as designated on the well drilling permit issued for that well by the Department.
- (c) Nonproducing unconventional gas wells. A horizontal unconventional gas well shall be subject to a 3 year minimum unconventional gas well fee, as set forth in 58 Pa. C.S. § 2302(b.1) (relating to nonproducing unconventional gas wells), regardless of capping or gas production levels. A vertical gas well is not subject to the 3 year minimum unconventional gas well fee when it does not produce natural gas in quantities greater than that of a stripper well.
 - (1) Horizontal unconventional gas wells during the 3 year minimum payment period. During the 3 year minimum payment period established for

horizontal unconventional gas wells under 58 Pa. C.S. § 2302(b.1), a horizontal unconventional gas well shall be subject to the unconventional gas well fee regardless of production levels.

(i) Submission of horizontal unconventional gas well production data. During the 3 year minimum payment period, producers are not required to verify production data for horizontal unconventional gas wells with the Commission since these wells are subject to the unconventional gas well fee.

(2) Horizontal unconventional gas wells after the 3 year minimum payment period. Following completion of the 3 year minimum payment period, a horizontal unconventional gas well must produce natural gas in quantities greater than that of a stripper well to be subject to the unconventional gas well fee.

(i) Horizontal unconventional gas wells subject to the fee. After the 3 year minimum payment period, a horizontal unconventional gas well on the Department's spud list as of December 31 of each year shall be subject to the unconventional gas well fee for that year unless the producer verifies with the Commission that the horizontal unconventional gas well did not produce natural gas in quantities greater than that of a stripper well during any calendar month in the reporting year. To determine the average daily production for a horizontal unconventional gas well, a producer shall use the calculation set forth in subparagraph (iii).

(ii) Submission of horizontal unconventional gas well production data. After the 3 year minimum payment period, a producer shall verify production data for a horizontal unconventional gas well for which the unconventional gas well fee is not due on the producer's annual producer well report filed with the Commission by April 1 of each year in accordance with § 131.4(a) (relating to annual producer well report).

(iii) Calculation of horizontal unconventional gas well production data. To determine average daily production data for a horizontal unconventional gas well, a producer shall divide the horizontal unconventional gas well's monthly production by the number of days the well is in production in the corresponding calendar month.

- (3) Vertical gas wells. A vertical gas well must produce natural gas in quantities greater than that of a stripper well to be subject to the unconventional gas well fee.
- (i) Vertical gas wells subject to the fee. A vertical gas well on the Department's spud list as of December 31 of each year shall be subject to the unconventional gas well fee for that year unless a producer verifies with the Commission that the vertical gas well did not produce natural gas in quantities greater than that of a stripper well during any calendar month in the reporting year. To determine the average daily production for a vertical unconventional gas well, a producer shall use the calculation set forth in subparagraph (iii).
- (ii) Submission of vertical gas well production data. A producer shall verify production data for a vertical gas well for which the unconventional gas well fee is not due on the producer's annual producer well report filed with the Commission by April 1 of each year in accordance with § 131.4(a).
- (iii) Calculation of vertical gas well production data. To determine average daily production data for a vertical gas well, a producer shall divide the vertical gas well's monthly production by the number of days the well is in production in the corresponding calendar month.
- (d) Plugging of unconventional gas wells. An unconventional gas well shall be subject to an initial unconventional gas well fee upon spudding. The payment of the unconventional gas well fee shall cease upon certification to the Department of plugging as follows:
- (1) Plugging of horizontal unconventional gas wells during the 3 year minimum payment period. During the 3 year minimum payment period, a horizontal unconventional gas well certified as plugged during a calendar year shall be subject to the unconventional gas well fee for that year. The unconventional gas well fee shall cease in the calendar year following the year in which the horizontal unconventional gas well was certified as plugged.
- (2) Plugging of horizontal unconventional gas wells after the 3 year minimum payment period. Following completion of the 3 year minimum payment period, only a horizontal unconventional gas well certified as plugged during a year in which it produced natural gas in quantities greater than that of a stripper well during any calendar month shall be subject to the unconventional gas well fee for that year. The unconventional gas well fee

shall cease in the calendar year following the year in which the horizontal unconventional gas well was certified as plugged. A horizontal unconventional gas well certified as plugged during a year in which it did not produce natural gas in quantities greater than that of a stripper well during any calendar month may not be subject to the unconventional gas well fee for that year.

(3) *Plugging of vertical gas wells.* A vertical gas well certified as plugged during a year in which it produced natural gas in quantities greater than that of a stripper well during any calendar month shall be subject to the unconventional gas well fee for that year. The unconventional gas well fee shall cease in the calendar year following the year in which the vertical gas well was certified as plugged. A vertical gas well certified as plugged during a year in which it did not produce natural gas in quantities greater than that of a stripper well during any calendar month may not be subject to the unconventional gas well fee for that year.

(4) *Certification date of plugging.* The certification date of plugging under 58 Pa. C.S. § 2302(e) (regarding cessation of the unconventional gas well fee) is the date an acceptable Certificate of Plugging is filed with and time-stamped by the Department under 58 Pa. C.S. § 3220 (relating to plugging requirements) and 25 Pa. Code § 78.91 (relating to general plugging provisions).

(e) *Reclassification of unconventional gas wells.* An unconventional gas well that is reclassified from a horizontal unconventional gas well to a vertical gas well or from a vertical gas well to a horizontal unconventional gas well shall pay the unconventional gas well fee applicable to a horizontal unconventional gas well for the year during which the reclassification occurred.

(1) *Reclassification date.* The reclassification date is the date an acceptable reclassification document amending an unconventional gas well's classification is filed with and time-stamped by the Department under 58 Pa. C.S. § 3211 (relating to well permits); 58 Pa. C.S. § 3222 (relating to well reporting requirements); and 25 Pa. Code, Chapter 78, Subchapters B (relating to permits) and E (relating to well reporting).

(f) *Setting of conductor pipe.* The setting of conductor pipe into the ground shall constitute spudding and shall subject the conductor pipe to an unconventional gas well fee.

(1) *Requirements applicable to conductor pipes.* Conductor pipes shall be subject to the same rules and requirements as are applicable under this

chapter to the unconventional gas well type, horizontal or vertical, dictated by the drilling permit issued for the conductor pipe by the Department.

§ 131.4. Producer reports.

- (a) Annual producer well report. By April 1 of each year, a producer shall file a “Producer Well Report” with the Secretary of the Commission. The report shall include the following:
 - (1) The number of unconventional gas wells of a producer in each municipality within each county that has imposed the unconventional gas well fee under 58 Pa. C.S. § 2302 and § 131.2.
 - (2) The date that each reported unconventional gas well was spud or ceased the production of natural gas.
- (b) Monthly producer well update report. A producer shall file with the Secretary of the Commission notice of an unconventional gas well status change, in the form of a “Monthly Producer Well Update Report,” within 30 days after the end of the calendar month in which one of the following events occurs:
 - (1) The spudding of an unconventional gas well.
 - (2) The initiation of production at an unconventional gas well.
 - (3) The removal of an unconventional gas well from production.
- (c) Producer disputes. A producer discovering a discrepancy in the unconventional gas well information supplied by the Department to the Commission under 58 Pa. C.S. § 2304 (relating to well information) shall address the discrepancy to the Department. The producer shall file a copy of the discrepancy with the Secretary of the Commission.
- (d) Local government disputes. A local government discovering a discrepancy in the unconventional gas well information supplied by the Department to the Commission under 58 Pa. C.S. § 2304 shall address the discrepancy to the Department. The local government shall file a copy of the discrepancy with the Secretary of the Commission.
- (e) Geographic information. The Commission will use the geographic information system maintained by PennDOT to determine municipal boundary lines and to calculate highway mileage formulas under 58 Pa. C.S. § 2314(d)(3) (relating to distribution of the unconventional gas well fee).

- (1) Disputes. A dispute regarding the accuracy of the geographic information utilized under subsection (d) shall be addressed to the appropriate forum for resolution. A disputing party shall file a copy of the dispute with the Secretary of the Commission.
- (i) Withholding of distribution. The Commission may withhold distribution of an unconventional gas well fee, or any part of it, pending resolution of a dispute regarding the geographic information utilized under subsection (d).
- (ii) Timing of disputes. A dispute regarding the accuracy of geographic information must be resolved in the appropriate forum, and notice of the resolution filed with the Commission, on or before May 1 of the relevant distribution year for the Commission to accurately account for a resulting change in impact fee distribution calculations for that year. A dispute regarding this information resolved, or notice of resolution filed with the Commission, after May 1 of a distribution year shall be corrected in the distribution year following resolution.

§ 131.5. Calculation of unconventional gas well fee.

- (a) Unconventional gas well fee. The unconventional gas well fee shall be determined under 58 Pa. C.S. §§ 2302(b)(1)-(b)(6) (relating to the components for unconventional gas well fee calculation).
 - (1) Adjustment of fee. The Commission will annually adjust the unconventional gas well fee to reflect upward changes in the Consumer Price Index for Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months as required under 58 Pa. C.S. § 2302(c) (relating to annual adjustment). If there are no upward changes in the Consumer Price Index for the relevant year, no Consumer Price Index adjustments will be made by the Commission to the unconventional gas well fee.
- (b) Administrative fee. The Commission may impose an annual administrative fee, not to exceed \$50 per spud unconventional gas well, on a producer to pay for the actual costs of the Commission to administer and enforce 58 Pa. C.S. Chapter 23 (relating to the unconventional gas well fee).
 - (1) Producers subject to administrative fee. A producer shall pay the administrative \$50 spud fee to the Commission with the submission of its unconventional gas well fee due by April 1 of each year. Only a producer

subject to the unconventional gas well fee shall be subject to the administrative \$50 spud fee.

(c) *Additional assessment.* By June 30 of each year, the Commission will estimate its expenditures for the next fiscal year that are directly attributable to administration and enforcement of 58 Pa. C.S. Chapter 23. After subtracting funds received from the administrative \$50 spud fee under subsection (b) and unconventional gas well fee distribution amounts received by the Commission under 58 Pa. C.S. § 2314(c.1) (relating to distribution of the unconventional gas well fee to the Commission), the Commission will assess any remaining balance of its estimated expenditures on producers in proportion to the number of unconventional gas wells owned by each producer.

(1) *Producers subject to additional assessment.* Only a producer subject to the unconventional gas well fee shall be subject to an additional assessment.

(2) *Payment of additional assessment.* Within 30 days of receipt of notice from the Commission regarding the amount of additional assessment due, a producer shall pay the additional assessment to the Commission.

(3) *Disputes regarding additional assessment.* A producer may challenge the amount of additional assessment due consistent with 66 Pa. C.S. § 510(c), (d) and (e) (relating to assessments for regulatory expenses).

§ 131.6. Collection of unconventional gas well fee.

(a) *Unconventional gas well fee due date.* Along with the annual producer well report filed under § 131.4(a), a producer shall submit payment of the unconventional gas well fee to the Commission by April 1 of each year.

(b) *Well disputes.* A producer shall identify a dispute regarding payment of the unconventional gas well fee on the annual producer well report filed under § 131.4(a). A producer should not submit payment of the unconventional gas well fee to the Commission for a disputed unconventional gas well until the dispute has been resolved.

(1) *Dispute proceedings.* Formal enforcement proceedings initiated by the Commission against a producer for untimely or delinquent unconventional gas well fee payments will be referred to the Commission's Bureau of Administration's Fiscal Office (Fiscal Office) and Bureau of Investigation and Enforcement. The formal enforcement proceedings will be conducted in accordance with 58 Pa. C.S. §§ 2307-2313 (relating to

enforcement) and the Commission's general rules of practice and procedure at 52 Pa. Code, Chapters 1, 3 and 5 as follows:

- (i) *Initiation of enforcement proceedings.* The Commission's Fiscal Office will initiate an enforcement proceeding against a producer for untimely or delinquent unconventional gas well fee payments by issuing a "Notice of Amount Due" under 58 Pa. C.S. § 2307(b) (relating to unconventional gas well fees not paid in full).
- (ii) *Written response required.* If a producer fails to pay the amount demanded in the Notice of Amount Due as required by subparagraph (i), the producer shall file with the Commission a written response regarding the matter within 20 days of the date of service of the Notice of Amount Due. If a producer fails to pay the amount demanded in the Notice of Amount Due and does not file a written response with the Commission, the producer may be deemed to be in default.
- (iii) *Referral for hearing.* If a producer fails to pay the amount demanded in the Notice of Amount Due, but files a written response with the Commission under subparagraph (ii), the Commission's Fiscal Office will refer the matter to the Commission's Office of Administrative Law Judge (OALJ) for hearing and issuance of a Recommended Decision pursuant to the Commission's rules of practice and procedure at 52 Pa. Code, Chapters 1, 3 and 5.
- (A) *Issuance of final order.* Following an adjudicatory proceeding before the Commission's OALJ, the Commission will issue a final order regarding the matter.
- (2) *Interest and penalties.* The Commission may assess interest and penalties against a producer for untimely or delinquent unconventional gas well fee payments as permitted by 58 Pa. C.S. §§ 2307-2313 (relating to enforcement and remedies) if one or more of the following occurs:

 - (i) A producer fails to pay the amount demanded in the Notice of Amount Due as required by § 131.6(b)(1)(i) (relating to initiation of enforcement proceedings).
 - (ii) A producer fails to file a timely written response with the Commission as required by § 131.6(b)(1)(ii) (relating to written response required).

- (iii) After hearing before the Commission's OALJ, the Commission sustains the amount due by a final order issued under § 131.6(b)(1)(iii) (relating to referral for hearing).
- (c) False or fraudulent reporting. If a producer does not file a well report under § 131.4(a) or files a false or fraudulent well report with the intent to evade the unconventional gas well fee, the Commission may assess the total amount of unconventional gas well fee owed at any time.
- (d) Refunds. The Commission will not issue refunds or adjustments of over-paid unconventional gas well fees, or disputed unconventional gas well fees already paid to the Commission, unless there is a classification or computational error in the calculation of the fee.
- (e) Petition for refund. A petition for refund shall be filed with the Secretary of the Commission by May 1 following the April 1 unconventional gas well fee payment due date referenced in § 131.6(a) (relating to unconventional gas well fee due date). Upon the expiration of this 30 day refund petition period, the Commission will not issue any refunds or adjustments of over-paid unconventional gas well fees.
- (f) Filing petition for refund. Petitions for refund must be in writing and specify, in numbered paragraphs, the following:
 - (1) The name, address and telephone number of the producer filing the petition for refund;
 - (2) The unconventional gas well permit number, assigned by the Department, of the over-paid unconventional gas well(s); and
 - (3) A detailed explanation of the classification or computational error causing the over-payment of the unconventional gas well fee.

§ 131.7. Distribution of unconventional gas well fee.

- (a) Unconventional gas well fund. The Commission shall deposit unconventional gas well fees imposed and collected under 58 Pa. C.S. Chapter 23 and under this chapter into a State Treasury fund known as the "Unconventional Gas Well Fund."
 - (1) Distribution. Following certain fixed distributions under 58 Pa. C.S. § 2314(c)-(c.2) (relating to distribution of the unconventional gas well fee), the Commission will distribute 60% of the remaining revenue in the

Unconventional Gas Well Fund to counties and municipalities to be used for purposes under 58 Pa. C.S. § 2314(g) (relating to the use of funds).

(2) *Distribution formula.* The distribution to counties and municipalities from the Unconventional Gas Well Fund shall be based on a formula, as set forth at 58 Pa. C.S. §§ (d)(1)-(3) (relating to distribution), that uses as its denominator the total number of spud unconventional gas wells subject to the unconventional gas well fee.

(3) *Restriction.* The amount allocated from the Unconventional Gas Well Fund to each municipality may not exceed the greater of \$500,000 or 50% of the total budget for the prior fiscal year beginning with the 2010 budget year and continuing every year following, adjusted to reflect upward changes in the Consumer Price Index for all Urban Customers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months.

(i) *Calculation of restriction.* To calculate the restriction, the Commission will annually update a municipality's total budget to reflect the total budget submitted for the prior fiscal year. The Consumer Price Index adjustment referenced in paragraph (3) shall apply to both the \$500,000 restriction and to the municipality's annually submitted budget information for the prior fiscal year.

(ii) *Submission of municipality approved budget reports.* To determine the restriction under paragraph (3), municipalities shall submit to the Commission by March 1 of each year a "Municipality Approved Budget Report" for the prior fiscal year.

(A) *Municipality approved budget report.* A municipality shall report its final approved budget to the Commission. The final approved budget shall have received final approval by the municipality's governing body and include all planned expenditures for the relevant calendar year funded by whatever sources of revenue the municipality has anticipated for that fiscal year.

(B) *Failure to file municipality approved budget report.* The Commission will use the \$500,000 restriction as may be adjusted under subparagraph (i) for a municipality that does not timely file a municipality approved budget report with the Commission under subparagraph (ii).

(4) *Use of funds.* Funds distributed to counties and municipalities from the Unconventional Gas Well Fund must be used for the purposes listed under 58 Pa. C.S. § 2314(g).

(5) Reporting of fund expenditure. Counties and municipalities receiving funds from the Unconventional Gas Well Fund shall annually submit, on or before April 15 of each year, an “Unconventional Gas Well Fund Usage Report” to the Commission accounting for the expenditure or commitment of the funds.

(i) Used and committed fund expenditure. The Unconventional Gas Well Fund Usage Report must include funds expended on or committed to one or more of the purposes listed under 58 Pa. C.S. § 2314(g). Counties and municipalities shall report the entire amount of funds received from the Unconventional Gas Well Fund in the prior year.

(ii) Capital reserve expenditures. Counties and municipalities committing funds to a capital reserve account under 58 Pa. C.S. §2314 (g)(11) (relating to deposit of funds into a county or municipal capital reserve account) are not required to report the later expenditure of funds from the capital reserve account in a subsequent reporting year.

(6) Publication of Unconventional Gas Well Fund Usage Reports. The Unconventional Gas Well Fund Usage Reports shall be annually published by municipalities and counties to the municipality’s or county’s publicly accessible website.

(i) Publication by municipalities. A municipality that does not maintain a publicly accessible website shall make the Unconventional Gas Well Fund Usage Report public in the same manner as that municipality makes its other actions public.

(A) No waiver required. A municipality is not required to seek a waiver from the Commission when making the Unconventional Gas Well Fund Usage Report public in the same manner as that municipality makes its other actions public.

(B) Public viewing. A municipality without a publicly accessible website shall make the municipality’s Unconventional Gas Well Fund Usage Report available for public viewing upon request.

(b) Marcellus legacy fund. Following the fixed distributions set forth in 58 Pa. C.S. § 2314(c)-(c.2) and the 60% distribution to counties and municipalities under § 131.7(a)(1), the Commission shall distribute 40% of the remaining revenue in the Unconventional Gas Well Fund to the “Marcellus Legacy Fund.”

(1) Reporting of fund expenditure. Counties receiving funds distributed by the Commission under 58 Pa. C.S. § 2315(a.1)(5) (relating to distributions from the Marcellus Legacy Fund) are not required to report the expenditure of the funds to the Commission.

(c) Distribution of funds. The Commission will distribute allocated revenue from the Unconventional Gas Well Fund and Marcellus Legacy Fund by July 1 of each year.